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Kevin Anderton, Scott Anderton, Eric Rodin,
Michael Ippolito, Don Rutt, and Danny Hockenberger

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LOCAL AD LINK, INC, et al.,

Plaintiffs,

vs.

ADZZOO, LLC, et al.,

Defendants and Third
Party Plaintiffs,

vs.

ZURVITA HOLDINGS, INC.; OMNIRELIANT
HOLDINGS, INC.

Third Party
Defendants.

CASE NO. 2:09-cv-01564-RCJ-LRL

**DEFENDANTS' REPLY IN
SUPPORT OF MOTION TO
DISMISS PLAINTIFFS' FIRST
AMENDED COMPLAINT FOR
FAILURE TO PROSECUTE**

**REPLY IN SUPPORT OF MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT FOR FAILURE TO PROSECUTE**

1 On April 28, 2010, Defendants AdzZoo, LLC, Kevin Anderton, Scott Anderton, Eric
2 Rodin, Michael Ippolito, Don Rutt, and Danny Hockenberger filed a Motion to Dismiss
3 Plaintiffs' First Amended Complaint for Failure to Prosecute ("Motion"). (Docket No. 58.) The
4 following day, the Court entered an Order regarding the briefing schedule for the Motion.
5 (Docket No. 60.) Under the Order, Plaintiffs' responses to the Motion were due within 14 days
6 from the date of the Order, making the responses due on May 13, 2010. (Apr. 29, 2010 Order,
7 Docket No. 60, at p. 3.) Defendants' reply was due seven days thereafter, on May 20, 2010.
8 (*Id.*) To date, Plaintiffs have not filed responses to Defendants' Motion to Dismiss nor requested
9 extensions of time to do so.
10

11 In addition to the reasons set forth in Defendants' Motion, Defendants are entitled to
12 dismissal for want of prosecution because Plaintiffs have failed to file a response to Defendants'
13 Motion. Under Local Rule 7-2, "The failure of an opposing party to file points and authorities in
14 response to any motion shall constitute a consent to the granting of the motion." L.R. 7-2(d).
15 The Court's Order further makes clear that, when the non-movant fails to respond to a motion to
16 dismiss, "[t]he court may then grant the motion and dismiss the non-moving party's claims."
17 (Apr. 29, 2010 Order, Docket No. 60, at p. 2.) Under the Local Rules and the applicable Court
18 Orders, therefore, Defendants' Motion may be granted due to Plaintiffs' failure to respond.
19
20

21 Plaintiffs have now violated two Court Orders – the Order of March 15 (Docket No. 46)
22 and the Order of April 29 (Docket No. 60) – and have failed to file responses to Defendants'
23 Counterclaims and Defendants' Motion to Dismiss. For all of the reasons set forth in
24 Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint for Failure to Prosecute,
25 and for the additional reasons set forth herein, Defendants respectfully request entry of an Order
26
27
28

1 dismissing Plaintiffs' First Amended Complaint in its entirety, with prejudice, pursuant to Rule
2 41(b).

3
4 DATED this 20th day of May, 2010.

5 Respectfully submitted,

6 /s/ Matthew T. Furton

7 MATTHEW T. FURTON, ESQ. (admitted *pro hac*
8 *vice*)

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26 Kevin Anderton, Scott Anderton, Eric Rodin,
27 Michael Ippolito, Don Rutt, and Danny
28 Hockenberger

CERTIFICATE OF SERVICE

1
2
3 1. On May 20, 2010, I served the above REPLY IN SUPPORT OF MOTION TO
4 DISMISS FOR FAILURE TO PROSECUTE by the following means to the persons as listed
5 below:

6 X a. EFC System (you must attach the "Notice of Electronic Filing", or list all
7 persons and addresses and attach additional paper if necessary):

8 X b. United States Mail, postage fully pre-paid (List persons and addresses.
9 Attach additional paper if necessary):
10

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13 Josh Dobrichovsky
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20 Robert McNulty
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23
24 By: /s/ Margaret M. Schuchardt
25
26
27
28